

AMENDED IN ASSEMBLY AUGUST 15, 2005

AMENDED IN ASSEMBLY JUNE 6, 2005

AMENDED IN SENATE APRIL 25, 2005

AMENDED IN SENATE APRIL 20, 2005

AMENDED IN SENATE MARCH 30, 2005

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**SENATE BILL**

**No. 723**

**Introduced by Senator Denham**

February 22, 2005

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An act to amend Section 6608.5 of the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL'S DIGEST

SB 723, as amended, Denham. Sexually violent predators: conditional release program.

Existing law requires the Director of Corrections, prior to the release of a person from custody who has been convicted for certain crimes of a sexual nature against 2 or more victims, to refer the person to the State Department of Mental Health for evaluation. Existing law authorizes civil commitment, as a sexually violent predator, to the custody of the State Department of Mental Health for treatment of the person's diagnosed mental disorder if the person is adjudicated to be likely to engage in sexually violent criminal behavior if discharged.

Existing law permits conditional release for one year of community treatment if, after a hearing, the court determines that the committed person does not pose a danger. Existing law requires that a nonparolee who is conditionally released under these provisions be placed in the county of domicile, as defined, unless the court finds that extraordinary circumstances require otherwise.

Existing law establishes provisions regulating the conditions for community release of inmates on parole.

This bill would, notwithstanding any provision of law, prohibit sexually violent predators released under the conditional release program from being placed within  $\frac{1}{4}$  mile of any public or private school providing instruction in kindergarten or any of grades 1 to 12, inclusive, if the person has been convicted of certain offenses or the court finds that the person has a history of improper sexual conduct with children.

*This bill would incorporate additional changes in Section 6608.5 of the Welfare and Institutions Code, to become operative only if AB 893 and this bill are both chaptered and become effective on or before January 1, 2006, and this bill is chaptered last.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6608.5 of the Welfare and Institutions  
2 Code is amended to read:  
3 6608.5. (a) A person who is conditionally released pursuant  
4 to this article shall be placed in the county of domicile of the  
5 person prior to the person's incarceration, unless the court finds  
6 that extraordinary circumstances require placement outside the  
7 county of domicile.  
8 (b) (1) For the purposes of this section, "county of domicile"  
9 means the county where the person has his or her true, fixed, and  
10 permanent home and principal residence and to which he or she  
11 has manifested the intention of returning whenever he or she is  
12 absent. For the purposes of determining the county of domicile,  
13 the court may consider information found on a California driver's  
14 license, California identification card, recent rent or utility  
15 receipt, printed personalized checks or other recent banking  
16 documents showing that person's name and address, or  
17 information contained in an arrest record, probation officer's  
18 report, trial transcript, or other court document. If no information  
19 can be identified or verified, the county of domicile of the  
20 individual shall be considered to be the county in which the  
21 person was arrested for the crime for which he or she was last

1 incarcerated in the state prison or from which he or she was last  
2 returned from parole.

3 (2) In a case where the person committed a crime while being  
4 held for treatment in a state hospital, or while being confined in a  
5 state prison or local jail facility, the county wherein that facility  
6 was located shall not be considered the county of domicile unless  
7 the person resided in that county prior to being housed in the  
8 hospital, prison, or jail.

9 (c) For the purposes of this section, “extraordinary  
10 circumstances” means circumstances that would inordinately  
11 limit the department’s ability to effect conditional release of the  
12 person in the county of domicile in accordance with Section 6608  
13 or any other provision of this article, and the procedures  
14 described in Sections 1605 to 1610, inclusive, of the Penal Code.

15 (d) The county of domicile shall designate a county agency or  
16 program that will provide assistance and consultation in the  
17 process of locating and securing housing within the county for  
18 persons committed as sexually violent predators who are about to  
19 be conditionally released under Section 6608. Upon notification  
20 by the department of a person’s potential or expected conditional  
21 release under Section 6608, the county of domicile shall notify  
22 the department of the name of the designated agency or program,  
23 at least 60 days before the date of the potential or expected  
24 release.

25 (e) The department shall take into consideration victim or  
26 victim next of kin concerns and proximity when recommending  
27 specific placement for community outpatient treatment.

28 (f) Notwithstanding any other provision of law, a person  
29 released under this section shall not be placed within one-quarter  
30 mile of any public or private school providing instruction in  
31 kindergarten or any of grades 1 to 12, inclusive, if either of the  
32 following conditions exist:

33 (1) The person has previously been convicted of a violation of  
34 Section 288.5 of, or subdivision (a) or (b), or paragraph (1) of  
35 subdivision (c) of Section 288 of, the Penal Code.

36 (2) The court finds that the person has a history of improper  
37 sexual conduct with children.

38 *SEC. 1.5. Section 6608.5 of the Welfare and Institutions Code*  
39 *is amended to read:*

1     6608.5. (a) A person who is conditionally released pursuant  
2 to this article shall be placed in the county of the domicile of the  
3 person prior to the person's incarceration, unless the court finds  
4 that extraordinary circumstances require placement outside the  
5 county of domicile.

6     (b) (1) For the purposes of this section, "county of domicile"  
7 means the county where the person has his or her true, fixed, and  
8 permanent home and principal residence and to which he or she  
9 has manifested the intention of returning whenever he or she is  
10 absent. For the purposes of determining the county of domicile,  
11 the court may consider information found on a California driver's  
12 license, California identification card, recent rent or utility  
13 receipt, printed personalized checks or other recent banking  
14 documents showing that person's name and address, or  
15 information contained in an arrest record, probation officer's  
16 report, trial transcript, or other court document. If no information  
17 can be identified or verified, the county of domicile of the  
18 individual shall be considered to be the county in which the  
19 person was arrested for the crime for which he or she was last  
20 incarcerated in the state prison or from which he or she was last  
21 returned from parole.

22     (2) In a case where the person committed a crime while being  
23 held for treatment in a state hospital, or while being confined in a  
24 state prison or local jail facility, the county wherein that facility  
25 was located shall not be considered the county of domicile unless  
26 the person resided in that county prior to being housed in the  
27 hospital, prison, or jail.

28     (c) For the purposes of this section, "extraordinary  
29 circumstances" means circumstances that would inordinately  
30 limit the department's ability to effect conditional release of the  
31 person in the county of domicile in accordance with Section 6608  
32 or any other provision of this article, and the procedures  
33 described in Sections 1605 to 1610, inclusive, of the Penal Code.

34     (d) The county of domicile shall designate a county agency or  
35 program that will provide assistance and consultation in the  
36 process of locating and securing housing within the county for  
37 persons committed as sexually violent predators who are about to  
38 be conditionally released under Section 6608. Upon notification  
39 by the department of a person's potential or expected conditional  
40 release under Section 6608, the county of domicile shall notify

1 the department of the name of the designated agency or program,  
2 at least 60 days before the date of the potential or expected  
3 release.

4 ~~(e) The department shall take into consideration victim or~~  
5 ~~victim next of kin concerns and proximity when recommending~~  
6 ~~specific placement for community outpatient treatment. In~~  
7 *recommending a specific placement for community outpatient*  
8 *treatment, the department or its designee shall consider all of the*  
9 *following:*

10 *(1) The concerns and proximity of the victim or the victim's*  
11 *next of kin.*

12 *(2) The age and profile of the victim or victims in the sexually*  
13 *violent offenses committed by the person subject to placement.*  
14 *For purposes of this subdivision, the "profile" of a victim*  
15 *includes, but is not limited to, gender, physical appearance,*  
16 *economic background, profession, and other social or personal*  
17 *characteristics.*

18 *(f) Notwithstanding any other provision of law, a person*  
19 *released under this section shall not be placed within*  
20 *one-quarter mile of any public or private school providing*  
21 *instruction in kindergarten or any of grades 1 to 12, inclusive, if*  
22 *either of the following conditions exist:*

23 *(1) The person has previously been convicted of a violation of*  
24 *Section 288.5 of, or subdivision (a) or (b), or paragraph (1) of*  
25 *subdivision (c) of Section 288 of, the Penal Code.*

26 *(2) The court finds that the person has a history of improper*  
27 *sexual conduct with children.*

28 *SEC. 2. Section 1.5 of this bill incorporates amendments to*  
29 *Section 6608.5 of the Welfare and Institutions Code proposed by*  
30 *both this bill and Assembly Bill 893. It shall only become*  
31 *operative if (1) both bills are enacted and become effective on or*  
32 *before January 1, 2006, (2) each bill amends Section 6608.5 of*  
33 *the Welfare and Institutions Code, and (3) this bill is enacted*  
34 *after Assembly Bill 893, in which case Section 1 of this bill shall*  
35 *not become operative.*